



Neutral Citation Number: [2025] UKFTT 263 (GRC)

Case Reference: FT/CA/2024/0012

First-tier Tribunal
(General Regulatory Chamber)
Charity

Heard remotely by CVP

Heard on: 21 January 2024.

Decision given on: 28 February 2025

Before

TRIBUNAL JUDGE DAMIEN J. MCMAHON
TRIBUNAL MEMBER MANU DUGGAL
TRIBUNAL MEMBER SUSAN WOLF

Between

UKRAINE DEVELOPMENT CHARITY

Appellant

-and-

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

Representation:

For the Appellant: None. (Dr. Matthew Parish, the Chairman of the Board of Trustees of the Appellant, who, purportedly, was to represent the Appellant did not appear).

For the Respondent: Ms. E. Hynes of counsel, instructed by the Respondent.

Decision: The appeal is Dismissed.

REASONS

Introduction and Background

1. This appeal, dated 12 July 1975 (sic. - presumably 12 July 2024) (pages 1-13) of the Hearing Bundle - hereafter the 'HB') was against a decision of the Respondent dated 29 February 2024 to refuse to constitute and register the institution ('the institution'), an incorporated association, known as Ukraine Development Charity, as a charity, in the form of a Community Interest Organisation ('CIO'), pursuant to s. 208(1)(a) of the Charities Act 2011 ('the Act') on the grounds that the purposes or Objects of the institution were not exclusively charitable nor for the public benefit (HB 51-61). This decision was upheld by the Respondent, upon review, in a Review Decision dated 13/06/2024 (HB 62-68). Dr. Parish, acting on behalf of the Appellant, had furnished further information and documentation to the Respondent in support of his review request on behalf of the Appellant (HB 271-282; 284 and 289-292). The Response of the Respondent was filed on 15 August 2024 (HB 14-50). No Reply was filed by, or on behalf of, the Appellant. This was perfectly within the Appellant's right.
2. This hearing was listed to commence at 10.00. Since Dr. Parish had not appeared on behalf of the Appellant, the clerk to the Tribunal attempted to telephone him on two occasions to no avail. The Tribunal waited until 10.10 before commencing the appeal.
3. The representative of the Respondent read out an email apparently sent to the Tribunal, by Dr. Parish (but not received by the Tribunal panel hearing this appeal but subsequently furnished on 27 January 2025), copied to the Respondent, late on the evening of 20 January 2025, stating that the HB had not been received by him, Dr. Parish, by 17 January 2025 as directed by a GRC Registrar; that he had not received log-in details to join the hearing; that he was in Ukraine but would try and join if he were sent the log-in details. He submitted that the appeal was an 'open and shut case', as per his Skeleton argument; that the Appellant's purposes were exclusively charitable; that there was no ambiguity in that regard, both of which points, he submitted, were evidenced in the Appellant's constitutional documents. The contents of the said email, as read out at the outset of the hearing by the Respondent's representative, was correct. The Tribunal noted that there was no application made by the Appellant, in the said email, to adjourn this hearing, it having been postponed twice previously - once on the application of Dr. Parish as he was, again, at that time, in Ukraine, and once for unavoidable administrative reasons by GRC.
4. The Respondent's representative stated that the Respondent could confirm that the HB and Authorities Bundle ('AB') had been available from 25 November

2024 and, again, from 17 January 2025, and that Dr. Parish had downloaded them on both occasions. She submitted that, since there was no inter-governmental arrangement in place between Ukraine and the United Kingdom, evidence could not be taken from Dr. Parish remotely from Ukraine. This was a correct statement of the law. Accordingly, the question of whether or not Dr. Parish received the joining link for today's hearing was otiose as Dr. Parish stated he was in Ukraine on today's date of hearing and could not, therefore, as a matter of law, give evidence from that location. However, for the sake of completeness, the Tribunal was satisfied that Dr. Parish, as the Appellant's representative, had been sent the joining link for today's hearing by GRC on 12 December 2024. The link was also sent to the Respondent. Further, Dr. Parish had requested on 21 November 2024, that this appeal, listed for 25 November 2024, be postponed as he, and others (who were not identified), were in Ukraine on that date of hearing too. The postponement application was granted on that occasion but it was directed that Dr. Parish be advised, and he was so advised, that it was unlikely that a further postponement would be granted. Ironically, Dr. Parish was, again, in Ukraine on this fresh date of hearing, 21 January 2025, from where he could not, as a matter of law, give evidence.

5. Rule 30 of the Charity Tribunal Rules 2008 provides that if a party fails to attend or be represented at any hearing of which that party has been duly notified, the Tribunal may, if it is satisfied that there is no sufficient reason for the absence, hear and determine the appeal in that party's absence or adjourn the hearing. The Tribunal was satisfied that Dr. Parish had been duly notified of the hearing, that there was no *sufficient* reason, in all the circumstances, for his absence, and decided, having regard, too, to the overriding objective, this appeal having being listed for hearing on two previous occasions (25 November 2024 and 10 January 2025), to hear and determine this appeal in the absence of Dr. Parish or any alternative representative of the Appellant. Further, Dr. Parish had been advised, when the joining link was sent to him on 19 December 2024, that if a party did not attend, the Tribunal might well proceed in their absence.
6. The Tribunal decided to proceed in the absence of Dr. Parish or any other representative of the Appellant.
7. Agreed draft Directions for hearing sent to GRC had not been promulgated and issued to the parties. While this was somewhat regrettable, that fact did not impede the determination of this appeal: directions for hearing were, in fact, considered and issued by the GRC Registrar on 25 November 2024 to the parties.

Nature of Appeal

8. Dr. Parish, on behalf of the Appellant, submitted in the Notice of Appeal dated '12 July 1975' [presumably intended to read '12 July 2024'] that the Decision of the Respondent, the decision under appeal, was 'Wednesbury unreasonable',

that is, it was a decision that no reasonable decision-maker would have made and, therefore, should be quashed. He repeated this erroneous submission in his Skeleton Argument. The concept of 'Wednesbury unreasonableness' is relevant only in an application for judicial review before the High Court, or in an application for review before the Tribunal: it is not a process that is relevant in appeal proceedings before the Tribunal, nor are appeal proceedings before the Tribunal akin to judicial review proceedings before the High Court. This was a grave misconception on the part of Dr. Parish as to the nature of these proceedings before the Tribunal.

9. These proceedings were not a review of the Respondent's decision-making process. The role of the Tribunal was, standing in the shoes of the Respondent, to consider the Appellant's application entirely afresh from a *de novo* perspective, but to which regard had to be taken of the views of the Respondent as the statutory authority tasked by Parliament to make decisions such as that made in this case.
10. The burden of proof that the Appellant's Objects were exclusively charitable and for the public benefit rested with the Appellant: Hipkiss v Charity Commission (CA/2017/0014).

Issues

11. The essential issues in this appeal were whether the Tribunal was satisfied that the Appellant was established *exclusively* for charitable purposes *and* that it was established and operating for the public benefit.
12. The Appellant, through Dr. Parish, on the evidence, focussed almost exclusively on the first issue only, albeit that was the primary issue that fell for determination by the Tribunal.

Exclusively Charitable Purposes

13. A significant factor in determining this issue was the fact that the Appellant, on the evidence, certainly on the balance of probabilities, had connections with non-charitable institutions, entities or bodies that appeared to conduct activities serving armed forces in Ukraine. A clear issue arose, on the evidence as to how, on the balance of probabilities, the Appellant could maintain its independence from such entities. Accordingly, this raised a concern, in itself, as to whether the purposes of the Appellant could be regarded as exclusively charitable.
14. The purposes, or Objects, of the Appellant were set out in its governing document entitled 'CIO Constitution.' This document was furnished to the Respondent on 25 December 2023 and changes thereto furnished on 2 March 2024 as part of the Appellant's review request, purportedly supported by further documentation.

15. Despite the original Objects, and changes thereto subsequently furnished by the Appellant to the Respondent, the Appellant appeared to have a political purpose, including providing support for military purposes. This alone could be sufficient to render the Appellant's purposes not being exclusively charitable, the effect of which would be that the appeal could be decided without reference to the second limb, the public benefit test.
16. It was unclear how the Appellant would
 - a) achieve its stated purpose of delivering aid – whether directly or through making grants, and
 - b) operate generally to satisfy the exclusively charitable imperative.
17. The Objects (as amended) did not assist in getting clarity on these issues. Also, there were apparent anomalies between the Appellant's grant-making policy and its Objects and a lack of clarity in respect of the enhanced Objects of 'citizenship' and 'community development'.
18. The Tribunal must decide the matters at issue in this appeal, including, at this stage, the question of whether the Appellant's Objectives, as amended or enhanced, are exclusively charitable, by reference to the statutory objectives and functions and general functions set out in ss.14-16, respectively, of the Act.
19. The tests to be applied in deciding the 'exclusively charitable' issue were set out in decisions of higher judicial authorities, including, Independent Schools Council v. Charity Commission [2011] UKUT 421 TCC; Attorney-General v. Ross [1986] 1 WLR and Helena Partnerships Limited v. Revenue and Customs Commission [2011] STC 1307. The activities of the Appellant may be considered, particularly where there may be doubt or ambiguity on this question, as is the case here. Accordingly, as has been done by the Appellant itself, through Dr. Parish, the Tribunal may have regard to extrinsic evidence in determining this appeal. All of these authorities were highly relevant.

Public Benefit

20. Notwithstanding the Tribunal's findings in paragraph 14, et seq. of this Decision on the 'exclusively charitable' issue, the Tribunal, following a series of judicial authorities, can consider the activities of the Appellant in determining whether the Appellant's Objects are capable of satisfying the statutory 'public benefit' criterion, going outside a mere inspection of its Constitution (as amended). Even if the Appellant's Objects appear to fall into the exclusively charitable purposes set out in s.3(1) of the Act, they are not regarded as being for the public benefit on the basis of appearance alone. In this case, 'political purposes' clearly are part of the Appellant's Objects. However, the Tribunal must decide whether

those political purposes meet the public benefit test by reference to the authorities of McGovern v. Attorney-General [1982] CH 321 and National Anti-Vivisection Society v. Inland Revenue Commissioners [1948] AC 31.

21. Another relevant factor in considering whether the Appellant's Objectives satisfy the statutory public benefit criterion, was the fact that The Foreign and Commonwealth Office and the Disasters Emergency Committee (a charity previously involved in raising funds for humanitarian aid in Ukraine) warned against all but essential travel to Ukraine. While the Appellant, in written evidence, submitted that it confined its operations to the west of Ukraine, in its application to the Respondent for registration, and on its website, its Objects include delivery of direct aid – possibly on the front line in Ukraine. This raises the possibility that the public benefit criterion would not be satisfied. Further, the addressing of this particular issue by Dr. Parish was inconsistent and under-developed.
22. It was of concern that Dr. Parish, in his Skeleton Argument on behalf of the Appellant, considered that if the Appellant's Objects were exclusively charitable (a position the Tribunal did not accept), the Appellant must be entered onto the Register of Charities. However, this was not the case in law: the Appellant must also satisfy the public benefit statutory criterion; indeed, Dr. Parish submitted that it was his understanding that the Respondent was not disputing whether the public benefit criterion was satisfied. However, this, too, was a misconception on his part: the Tribunal found that there was, at the very least, some considerable doubt that it was so satisfied having regard to the statutory and common law.

Conclusions

23. Dr. Parish, in his Skeleton Argument, submitted that one of the documents submitted by him in connection with his request to have the Respondent review its decision, entitled 'Ukraine Development Charity Policy Principles to Preserve Independence', reinforced his contention that the Objects of the Appellant were exclusively charitable. This document was intended to overcome the concern of the Respondent, as he understood it concerning the relationships between four different entities and how the necessary separation between charitable and non-charitable Objects of these different entities would function operationally, particularly since the same persons were to be involved operationally and that operations appeared to be planned to take place on the front line in Ukraine or in aid of the Ukraine armed forces.
24. The Tribunal accepted that Dr. Parish had made efforts to ensure the Appellant's compliance with charity law through amendments to charity documentation and public-facing material in light of the Respondent's observations. However, this is insufficient, by itself, for the Tribunal to allow the appeal. Dr. Parish has simply offered bare assertions, rather than adducing firm evidence to deal with the fundamental issues of charity law raised by the Respondent. Further, the only

amendment made to the website, which was a common website between four different entities including the Appellant, did not adequately address the concerns of the Respondent (nor the Tribunal on appeal), there, for example, being no Operations Manual furnished, nor anything to show operational activities, proposed or otherwise, in the different areas of activity of the Appellant. Of particular concern was the lack of explanation that the Appellant's activities would be 'overseen' by an organisation entitled 'Foundation for Development, of which Dr. Parish was the Chief Executive Officer, raising a concern as to a possible conflict of interest as the Tribunal finds that Dr. Parish is the 'controlling mind' behind the Appellant. Finally, a concern existed, one that was not resolved by Dr. Parish, as to how donations to the Appellant wld be managed.

25. The Tribunal was not satisfied that the Objectives of the Appellant, even as amended, met the statutory and common law requirements of being exclusively charitable and for the public benefit.
26. While political activity might well be possible in appropriate cases, there was a real concern in this case that the Appellant would give funds to non-governmental organisations for onward distribution which would breach charity law and this view was supported by a distinct lack of detail concerning this proposed activity and method of operation.
27. The Appellant was operating in a war zone. In principle, this fact alone was not fatal to the appeal, but Dr. Parish simply did not provide sufficient evidence to show that the Appellant's Objects were exclusively charitable and for the public benefit. This was even more important in circumstances where there exists a higher risk of charity funds being used for non-charitable activities such as in this case.
28. The 'context and environment' in which the Appellant would be operating, as described by Dr. Parish, that is, in the current climate in Ukraine, places an even higher level of expectation on the Appellant, due to the higher risk of political involvement, such that the statutory and common law criteria would not be met and the independence of the Appellant would be compromised.
29. There was a distinct lack of detail on matters from Dr. Parish (there being nothing from the other trustees of the Appellant) despite requests from the Respondent.
30. On the question of grant-making by the Appellant, little, if any detailed information was provided by Dr. Parish on behalf of the Appellant.
31. To a very great degree, the assertions made by Dr. Parish were more concerning *him* and *his* experience as opposed to making a sufficient case for the Appellant to be entered onto the Register of Charities.

32. Finally, the Tribunal found that there was a common management between the four said different entities, that included the Appellant; that the Ukraine military would benefit from use of charity funds and, ultimately, that the Objects of the Appellant were not exclusively charitable nor for the public benefit as defined in charity law.

Signed: *Damien McMahon*
Tribunal Judge

Date: 18 February 2025